

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Andrew JAMIESON

Appl. No. 10/516,445

Filed: November 30, 2004

For: **Display Device and Funds
Transaction Device Including The
Display Device**

Confirmation No. 2996

Art Unit: 3687

Examiner: Vanel FRENEL

Atty. Docket: 2222.5970001

Brief on Appeal Under 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

A Pre-Appeal Brief Request for Review was submitted together with a Notice of Appeal from the final rejection dated March 17, 2009 of claims 33-64 on June 17, 2009. A Notice of Panel Decision from Pre-Appeal Brief Review passing the application onto appeal was mailed on August 4, 2009. Appellant hereby files one copy of this Appeal Brief, together with the required fee set forth in 37 C.F.R. § 41.20(b)(2).

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 19-0036.

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I. Real Party in Interest (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest in this appeal is Calabro Services Co. L.L.C., having its principal place of business at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. An Assignment assigning all right, title, and interest in and to the patent application from the inventor to MCom Solutions, Inc. was recorded in the United States Patent and Trademark Office on November 30, 2004, at reel 016591, frame 0667. An Assignment assigning all right, title, and interest in and to the patent application from MCom Solutions, Inc. to Calabro Services Co. L.L.C. was recorded in the United States Patent and Trademark Office on March 8, 2007, at reel 018972, frame 0682.

II. Related Appeals and Interferences (37 C.F.R. § 41.37(c)(1)(ii))

To the best of the knowledge of Appellant, Appellant's legal representative, and Appellant's assignee, there are no other appeals, interferences, or judicial proceedings which are related to, directly affect, or be directly affected by or have a bearing on a decision by the Board of Patent Appeals and Interferences ("the Board") in the pending appeal.

III. Status of Claims (37 C.F.R. § 41.37(c)(1)(iii))

This application was originally filed as U.S. Application No. 10/516,445 on November 30, 2004 with claims 1-32. This Appellant claims benefit under 35 U.S.C. §371 to PCT/AU03/00543 filed on May 7, 2003, which claims benefit to Australian Application PS 2653 filed May 30, 2002. A Preliminary Amendment was filed November 30, 2004, in which claims 1-32 were cancelled and new claims 33-64 were added. A non-final Office Action issued November 2, 2008 ("Non Final Office Action"), in which claims 33-64 were rejected. An Amendment and Reply was filed December 31, 2008, in which claim 33 was amended ("First Reply"). A final Office Action issued March 17, 2009 ("Final Office Action"), in which the amendment to claim 33 was entered, and claims 33-64 were finally rejected. An after final Reply was filed May 18, 2009 ("Second Reply"), on the same day a telephonic Interview was held with the Examiner. An Advisory Action issued June 9, 2009 ("Advisory Action"), in which the final rejection was sustained. A Pre Appeal Conference Argument was filed June 17, 2009 ("Argument"). The Panel Decision sustaining the final rejection of all claims, and passing this application to issue, issued August 4, 2009 ("Panel Decision").

Claims 33-64 are pending. Claims 33-64 are finally rejected and are being appealed. Claims 1-32 have been previously cancelled. A copy of the claims on appeal can be found in the attached Claims Appendix as required under 37 C.F.R. § 41.37(c)(1)(viii).

IV. Status of Amendments (37 C.F.R. § 41.37(c)(1)(iv))

No amendments have been filed subsequent to the Final Office Action dated March 17, 2009. All amendments to the claims previously presented during prosecution have been entered.

V. Summary of Claimed Subject Matter (37 C.F.R. § 41.37(c)(1)(v))

A concise explanation of the subject matter recited in each of the independent claims on appeal (i.e., claims 33, 48, and 55) is provided below. The explanation refers to the specification, as presented in U.S. Published Patent Application 2005/0222925 that published October 6, 2005, by paragraph number and to the drawings by reference characters. Reference is made to example supporting embodiments disclosed in the specification, although it is understood that the claims should not be limited to the specific embodiments to which reference is made.

Claims 33, 48, and 55 recite, e.g., a display device, a financial transaction device, and a mobile telephone configure to perform financial and non-financial transactions.

A. Claim 33

Claim 33 recites a display device (e.g., FIGS. 1 and 2, element 20; para [0079]) for a personal device (e.g., personal device section FIG. 1, element 10) intended to perform financial transactions as well as personal functions other than financial transactions. The display device comprises:

- a display (e.g., FIG. 2, element 24; para [0081]) for displaying information to a user; and
- a financial transaction controller (e.g., FIG. 1, element 26; para [0081]) coupled to the display (e.g., via display driver FIG. 1, element 30), wherein the financial transaction controller selectively allows the display and an input device to operate under the control of the personal device to enable personal functions other than financial transactions to be performed (e.g., para [0085] "a mobile telephone call that is not a financial transaction"), and wherein the financial transaction controller

assumes control of the display and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction (e.g., para [0086] "takes over command of the display 24 and keypad 12 so that they cannot operate under the command of the controlling electronics 11 of the mobile telephone.").

B. Claim 48

Claim 48 recites a financial transaction device for performing financial transactions as well as personal functions other than financial transactions (e.g., the personal device of FIG.

1). The device comprises:

- an input device for the entry of data into the financial transaction device (e.g., FIGS. 1 and 2, element 12; para [0078]);
- a display for displaying information to a user (e.g., FIGS. 1 and 2, element 24; para [0081]);
- a financial transaction controller (e.g., FIG. 1, element 26; para [0081]) coupled to the display (e.g., via display driver FIG. 1, element 30) and the input device (e.g., via processing unit FIG. 1, element 28); and
- a personal device (e.g., FIG. 1, element 10; para [0078]) including controlling electronics coupled to the financial transaction controller (e.g., FIG. 1, element 11; para [0080]),
- wherein the personal device is configured to control the financial transaction device to perform personal functions other than financial transactions (e.g., para [0085] "In order to perform a mobile telephone call that is not a financial transaction,

the mobile telephone is used in the conventional way. In this condition, the controlling electronics 11 is coupled to the display driver 30 and to the display 24 by the processor 28."), and

- wherein the financial transaction controller selectively allows the display and the input device to operate under the control of the controlling electronics to enable personal functions other than financial transactions (e.g., para [0085] "a mobile telephone call that is not a financial transaction"), where the financial transaction controller assumes control of the display and the input device to prevent the controlling electronics from accessing the display and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction (e.g., para [0086] "takes over command of the display 24 and keypad 12 so that they cannot operate under the command of the controlling electronics 11 of the mobile telephone.").

C. Claim 55

Claim 55 recites a mobile telephone for performing financial transactions as well as mobile telephone calls other than financial transactions (e.g., the personal device of FIG. 1). The mobile telephone comprises:

- an input device for the entry of data into the mobile telephone (e.g., FIGS. 1 and 2, element 12; para [0078]);
- a display for displaying information to a user (e.g., FIGS. 1 and 2, element 24; para [0081]);
- controlling electronics (e.g., FIG. 1, element 11) for enabling a mobile telephone call to be performed with the mobile telephone (e.g., para [0085] "In order to perform

a mobile telephone call that is not a financial transaction, the mobile telephone is used in the conventional way. In this condition, the controlling electronics 11 is coupled to the display driver 30 and to the display 24 by the processor 28.");

- a financial transaction controller (e.g., FIG. 1, element 26; para [0081]) coupled to the display (e.g., via display driver FIG. 1, element 30),
- wherein the financial transaction controller selectively allows the input device and the display to be coupled to the controlling electronics to enable mobile telephone calls other than financial transactions (e.g., para [0085] "a mobile telephone call that is not a financial transaction"), and
- wherein the financial transaction controller disconnects the controlling electronics from the display and the input device and assumes control of the display and the input device to perform a financial transaction (e.g., para [0086] "the processing unit ... acts to disconnect the display 24 and keypad 12 from the controlling electronics 11 of the mobile telephone and also takes over command of the display 24 and keypad 12 so that they cannot operate under the command of the controlling electronics 11 of the mobile telephone.").

Each of independent claims 33, 48, and 55 find support *at least* in the above-referenced sections of the Specification. The remaining claims draw support from the aforementioned sections of the Specification.

VI. Grounds of Rejection To Be Reviewed on Appeal (37 C.F.R. § 41.37(c)(1)(vi))

In the Final Office Action, the Examiner rejected claims 33-64 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 6,016,480 to Houvener et al. ("Houvener") in view of U.S. Published Patent Application No. 2001/0037249 to Fitzgerald et al. ("Fitzgerald"). Accordingly, the sole ground of rejection to be reviewed on appeal is whether claims 33-64 would have been obvious over Houvener in view of Fitzgerald U.S.C. § 103(a).

VII. Argument (37 C.F.R. § 41.37(c)(1)(vii))

There is one ground of rejection to be reviewed on appeal.

A. Rejection of claims 33-64 under 35 U.S.C. § 103(a) as being obvious over Houvener in view of Fitzgerald

The Examiner rejected claims 33-64 under 35 U.S.C. § 103(a) in the Final Office Action as allegedly being obvious over Houvener and Fitzgerald. The Examiner maintained this rejection in the Advisory Action, and was affirmed in the Panel Decision.

1. The Examiner Bears the Burden of Establishing a Prima Facie Case of Obviousness Using Articulated Reasoning and Without Using Improper Speculation, Conjecture, and Hindsight

The Examiner has failed to meet the burden of establishing a prima facie case of obviousness based on the teachings or suggestions of the applied references. Rather, the Examiner misinterprets the technical teachings of Fitzgerald and provides conclusory statements, without any articulated reasoning with some rational underpinning, and relies upon what can only be seen as impermissible speculation, conjecture, and hindsight.

The Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. *In re Piasecki*, 745 F.2d 1468, 1471-73, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). The Examiner has failed to meet this burden. Without more evidence of unpatentability, Appellant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

The Board recently articulated an aspect of the Examiner's burden when establishing a rejection for obviousness in *Ex parte Competitive Technologies, Inc.*, Appeal No. 2009-005519, Reexamination Control 90/008,305 at page 6 (B.P.A.I. 2009):

When determining whether a claim is obvious, an Examiner must make "a searching comparison of the claimed invention – including all its limitations – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Int'l. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

Furthermore, as the Supreme Court recently stated, "there must be some *articulated reasoning* with some *rational underpinning* to support the legal conclusion of obviousness." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)). In *KSR* the Court noted that "[t]o facilitate review, this analysis should be made explicit." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere *conclusory statements*; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")). *Id.* (emphasis added). Finally, the Supreme Court also confirmed that, "[a] fact finder should be aware, of course, of the distinction caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007).

Further, the Board recently held an Examiner cannot rely on speculation of what the reference *may* be teaching using conclusory statements. In an exemplary post-KSR BPAI decision, *Ex Parte Kamran Ahmed*, Appeal 2007-2765, App. 09/526,442, Decided Feb. 11, 2008 at page 6, the Board opined "Further, a rejection based on section 103 must rest upon a factual basis rather than conjecture, or speculation. 'Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand.' (quoting *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967)). See also *In re Kahn*, 441 F.3d at 988." Also, on page 10 of *Ex*

Parte Ahmed, the Board held the Examiner relied on improper speculation, and reversed the obviousness rejection.

For example, in the Non Final Office Action and Final Office Action, as discussed in more detail below, the Examiner has provided ambiguous statements on how the applied references are being used to suggest various features of the claims. Despite Appellant's repeated arguments against the references and Appellant's requests for clarification in view of the ambiguous statements, including conducting an Interview, the Examiner has provided no "articulated reasoning" to allow Appellant to properly address the Examiner's concerns.

Therefore, Appellant's arguments in the First Reply in response to the Non Final Office Action were not properly considered by the Examiner in the Final Office Action. Moreover, Appellant's arguments in the Second Reply filed in response to the Final Office Action were not properly considered by the Examiner in the Advisory Action. In particular, the Examiner has failed to properly address, in either the Final Office Action or the Advisory Action, arguments first articulated in the First Reply that independent claims 33, 48, and 55 each recite features that distinguish over the applied references, as again articulated below.

2. *Example Distinguishing Features of Claims 33, 48, and 55*

Claims 33, 48, and 55 recite features that distinguish over the applied references. For example, Independent claims 33, 48, and 55 each recite features that distinguish over the applied references. For example:

claim 33 recites:

a financial transaction controller coupled to the display, wherein the financial transaction controller selectively allows the display and an input device to operate under the control of the personal device to enable personal functions other than financial transactions to be performed, and wherein the

financial transaction controller assumes control of the display and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction

claim 48 recites

wherein the financial transaction controller selectively allows the display and the input device to operate under the control of the controlling electronics to enable personal functions other than financial transactions, where the financial transaction controller assumes control of the display and the input device to prevent the controlling electronics from accessing the display and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction

and claim 55 recites

wherein the financial transaction controller selectively allows the input device and the display to be coupled to the controlling electronics to enable mobile telephone calls other than financial transactions, and

wherein the financial transaction controller disconnects the controlling electronics from the display and the input device and assumes control of the display and the input device to perform a financial transaction

As will be discussed in greater detail below, the applied references fail to establish a prima facie case of obviousness because the applied references fail to properly teach or suggest at least the above-noted distinguishing features.

3. *The Rejection of Claims 33-64 is in Error and Must be Reversed Because the Examiner Has Improperly Interpreted the Technical Teachings of the Applied References*

Appellant submits that the Examiner has construed Houvener and Fitzgerald too broadly, and is reading into these references subject matter which is not disclosed therein, but rather what is disclosed in the pending claims. Appellants respectfully assert that the Examiner's statements regarding Fitzgerald improperly and impermissibly go beyond the disclosure of the reference and, rather than any evidence of record, find their basis only in speculation and hindsight.

The Examiner states Houvener does not teach or suggest at least the above-noted distinguishing features, and rather states Fitzgerald allegedly suggests these features. However, Appellants cannot find at least the above-noted distinguishing feature of claims 33, 48, and 55 taught or suggested in either reference.

a) *The Examiner Misinterprets the Technical Teaching of Fitzgerald*

(i) *Overview of Fitzgerald*

The Examiner does not rely on Houvener in the Non Final Office Action, Final Office Action, or Advisory Action as allegedly teaching or suggesting at least the above-noted claimed features. Rather, the Examiner continues to rely on Fitzgerald.

Fitzgerald is directed to a secure Electronic Funds Transfer Point of Sale ("EFTPOS") device with a display (Fitzgerald FIG. 3, element 12; [0034]) that is attached to a cellular phone in order to establish a data connection between the EFTPOS device and the phone. (Fitzgerald at [0033]). The EFTPOS device can then access a mobile data network through the attached phone without the need for a separate modem transceiver card and access plan. (Fitzgerald at [0004] - [0005]). When the phone is needed for other uses, it can be unattached

from the EFTPOS device and used as a regular phone. (Fitzgerald at [0047]). However, absent the use of improper speculation and conjecture by the Examiner, Fitzgerald nowhere teaches or suggests a "financial transaction controller coupled to the display," as recited in claim 33.

(ii) *Display and Input Device Located on the EFTPOS Device of Fitzgerald*

Assuming, to which Appellant does not acquiesce, a display located on the EFTPOS device of Fitzgerald is being used by the Examiner to be the display of claims 33, 48, and 55, Fitzgerald nowhere teaches or suggests, aside from improper speculation and hindsight, allowing that EFTPOS display to be "selectively ... under the control of the personal device to enable personal functions other than financial transactions to be performed" as recited, using respective language, in claims 33, 48, and 55. In contrast, the only purpose of the phone in Fitzgerald, when integrated with the EFTPOS device, is to serve as an access point to a communication network. (Fitzgerald at paragraphs 0042-43). Fitzgerald discloses as an advantage the ability to detach the cellular telephone from the EFTPOS device in paragraph [0047], and therefore does not desire allowing the display (e.g., FIG. 3, element 12) on the EFTPOS device from being used for both EFTPOS and normal phone usage.

Likewise, assuming, to which Applicant does not acquiesce, an input device located on the EFTPOS device of Fitzgerald is being used by the Examiner to be the input device of claims 33, 48, and 55, Fitzgerald nowhere teaches or suggests, aside from using improper speculation and hindsight, allowing an EFTPOS input device to be "selectively ... under the control of the personal device to enable personal functions other than financial transactions to be performed" as recited, using respective language, in claims 33, 48, and 55. For example, the "secure keypad 11" of Fitzgerald is never under the control of anything but the EFTPOS

device itself. Nowhere does the cellular telephone in Fitzgerald take control of an input device on the EFTPOS device.

(iii) *Display and Input Device Located on the Cellular Telephone of Fitzgerald*

Fitzgerald also does not teach or suggest that any display on the phone is selectively under the control of the EFTPOS device such that "the financial transaction controller ***assumes control of the display*** and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction," as recited, using respective language, in claims 33, 48, and 55. The only indication of interaction between the EFTPOS device and the cellular telephone's display in Fitzgerald is a statement that "[t]he display means may be the display of the communications device in a suitable implementation." (Fitzgerald at [0018]). Fitzgerald appears to simply indicate that the EFTPOS device is capable of displaying data on a communications device display, but lacks any disclosure or suggestion, aside from using improper speculation or hindsight, about doing so in the claimed manner. For example, simply using the display of the cellular telephone in Fitzgerald as a display for the EFTPOS device does not teach or suggest that such usage causes the EFTPOS device to "[assume] control of the display" nor "prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction.

Moreover, Fitzgerald nowhere teaches or suggests that any input device on the phone is selectively under the control of the EFTPOS device such that "the financial transaction controller ***assumes control of the display and the input device*** to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction," as recited, using respective language, in claims 33, 48, and 55. Fitzgerald nowhere discloses an input device on the communication device, such

as the cellular telephone, and accordingly never discloses providing for the EFTPOS device to assume control thereof "to prevent tampering with or tapping off of the data entered into the input device," as recited in the claims.

Accordingly, it cannot be the case, absent the use of impermissible speculation, conjecture, or hindsight by the Examiner of what is taught by Fitzgerald, that Fitzgerald teaches or suggests at least the above-noted distinguishing features of claims 33, 48, and 55.

b) The Examiner Has Provided A Deficient Response to Appellants' Arguments in the First and Second Replies in the Final Office Action and Advisory Action

In responding to the First Reply, the Examiner states in the Response to Argument section of the Final Office Action:

With respect to Applicant's first argument, the Examiner respectfully submitted that He relied upon the teaching of Fitzgerald (See Fitzgerald, Fig. 3, Page 2, Paragraph 0034) which correspond (sic) to Applicant's claimed feature. Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained. (Final Office Action, p. 11).

The Examiner then incorrectly states that "Applicant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed." (Final Office Action p. 12). Appellant respectfully submits that the purpose of the arguments presented, for example, on page 12 of the First Reply, was precisely to point to specific distinctions between the features disclosed in the references and the features that are claimed.

Not only has Appellant indicated specific distinctions, but has done so under two possible interpretations of how the Examiner's ambiguous arguments could have been construed, without acquiescing to either, with regard to how the Examiner may have been applying Fitzgerald. The constructions considered by Appellant include, for example, that a

display that is being controlled is alternatively on (a) the EFTPOS device (see, e.g., Section VII(A)(3)(a)(ii), *supra*) or (b) on the phone (see, e.g., Section VII(A)(3)(a)(iii), *supra*). The Examiner has not provided further guidance, in either the Final Office Action or Advisory Action, as to which of the alternative interpretations being assumed by Appellant was actually intended by the Examiner's ambiguous arguments. Nevertheless, Appellant has distinguished the instant claims over *both* interpretations, without acquiescing to either interpretation, and therefore the Examiner has failed to establish a *prima facie* case of obviousness for *either* interpretation.

The only guidance the Examiner provides on where to locate a teaching or suggestion in Fitzgerald regarding at least the above-noted distinguishing features of claims 33, 48, and 55 is FIG. 3 and paragraph 0034 of Fitzgerald. FIG. 3 is a diagram of the EFTPOS device, which has a display, element 12. Paragraph 0034 of Fitzgerald merely details the hardware elements of the EFTPOS device. Appellant finds it difficult to determine, based on this broad conclusory statement by the Examiner, the rational underpinning behind the Examiner's argument as to why these sections teach or suggest the distinguishing features of the claims beyond improper speculation, conjecture, or hindsight.

The Examiner has provided no articulated reasoning or rational underpinning, instead restating the previous ambiguous rejection without any further guidance regarding how the subject matter of FIG. 3 and paragraph [0034] allegedly suggest at least the above-noted distinguishing features of claims 33, 48, and 55. Also, based on the Examiner's statements in the Final Office Action, the Examiner does not appear to have considered in detail, nor addressed in detail, the Appellant's arguments in the First Reply, which clearly articulated how the claims distinguish from the applied references.

Throughout pages 11-13 of the Final Office Action, the Examiner improperly, and without further articulation, appears to indicate the rejection relies on *what is possibly suggested by*, rather than explicitly taught by, the applied references. For example, the Examiner states that he has "satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and motivations for combinations *that fairly suggest* Applicant's claimed invention." (Final Office Action, p. 12) (emphasis added).

Also, for example, the Examiner states:

The Examiner is concerned that Applicant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is ... by what [the references] *would reasonably suggest* to one of ordinary skill in the art... .

(Final Office Action, p. 13) (emphasis added).

The Examiner's submission that "[t]he issue of obviousness is not determined by what the references expressly state but *by what they would reasonably suggest* to one of ordinary skill in the art," is improper, as the Examiner has failed to provide the *KSR* required "articulated reasoning with some rational underpinning" as to what exactly those *suggestions* might be, relying instead on the improper, under *KSR*, "mere conclusory statements" that perceived *suggestions*, as interpreted, but not articulated by the Examiner, meet the claims. The Examiner is also reminded that the Examiner bears the initial burden of *factually supporting* any *prima facie* conclusion of obviousness, failing which, "the Appellant is under no obligation to submit evidence of nonobviousness." (M.P.E.P. § 2142).

In the Advisory Action, the Examiner restates the same broad arguments, and provides no resolution to the issues argued by Appellant.

In summary, the Examiner has not properly articulated the reasoning behind why the suggested portions of the applied references should be interpreted outside of what is actually taught in the reference. Rather, the Examiner appears to rely on improper speculation, conjecture, and hindsight that the applied reference is suggesting at least the above noted distinguishing features.

c) Summary of Why The Applied References Lack Any Suggestion of the Example Distinguishing Features

First, assuming, to which Appellant does not acquiesce, a display or an input device located on the EFTPOS device of Fitzgerald is being used by the Examiner to be the display or input device of claims 33, 48, and 55, Fitzgerald nowhere teaches or suggests allowing that display or input device to be selectively under the control of either the EFTPOS device or the phone, as recited, using respective language, in claims 33, 48, and 55.

Second, Fitzgerald does not teach or suggest that any display or input device on the phone is selectively under the control of the EFTPOS device such that the EFTPOS device assumes control of the display and the input device to prevent tampering with or tapping off of data, as recited, using respective language, in claims 33, 48, and 55.

Accordingly, it cannot be the case, absent the use of impermissible speculation and conjecture by the Examiner of what is taught by Fitzgerald, that Fitzgerald teaches or suggests at least the above-noted distinguishing features of claims 33, 48, and 55.

d) The Dependent Claims Are Also Not Taught By The Applied References

Claims 34-47, 49-54, and 56-64 are also not rendered obvious by the combination of Houvener and Fitzgerald for at least the same reasons as claims 33, 48, and 55, from which they respectively depend, and further in view of their own respective features.

e) Conclusion

Accordingly, the Examiner has not met the standard for sustaining an obviousness rejection, as articulated by the Supreme Court in *KSR*, and further explained in many lower court and Board decisions, and therefore has failed to establish a prima facie case of obviousness as to claims 33-64. For at least these reasons, Appellant respectfully requests the reconsideration and reversal of the rejection of claims 33-64 under 35 U.S.C. § 103(a) over Houvener and Fitzgerald.

B. Conclusion

The subject matter of claims 33-64 is patentable over the applied references because the Examiner has failed to make a prima facie case of obviousness. Therefore, Appellant respectfully requests that the Board reverse the Examiner's final rejection of these claims under 35 U.S.C. § 103 and remand this application for issue.

Respectfully submitted,

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VIII. Claims Appendix (37 C.F.R. § 41.37(c)(1)(viii))

33. A display device for a personal device intended to perform financial transactions as well as personal functions other than financial transactions, the display device comprising:

a display for displaying information to a user; and

a financial transaction controller coupled to the display, wherein the financial transaction controller selectively allows the display and an input device to operate under the control of the personal device to enable personal functions other than financial transactions to be performed, and wherein the financial transaction controller assumes control of the display and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction.

34. The display device of claim 33, wherein the financial transaction controller is an electronic funds transfer point of sale (EFTPOS) controller that includes a processor, a display driver connected to the processor and a secure memory coupled to the processor, and wherein the secure memory stores secure data and the processor is coupled to the display by the display driver.

35. The display device of claim 34, wherein the personal device includes controlling electronics, and wherein the display device includes circuitry for coupling the processor to the input device and the controlling electronics of the personal device.

36. The display device of claim 33, wherein the financial transaction controller is physically attached to the display.

37. The display device of claim 33, wherein the financial transaction controller is integrated with the display.

38. The display device of claim 33, wherein the financial transaction controller is integrated with the display by connecting the financial transaction controller to a printed circuit board (PCB) that includes a display driver for controlling the display.

39. The display device of claim 33, wherein the display is a liquid crystal display (LCD) having a glass face and the financial transaction controller is directly mounted onto the glass face of the LCD by a chip on glass process.

40. The display device of claim 35, wherein the display device is coupled to the controlling electronics of the personal device by a zero insertion force connector, and wherein disconnection of the display device from the controlling electronics provides a trigger signal that causes data within the financial transaction controller to be erased to prevent unauthorized access of the data.

41. The display device of claim 40, wherein a circuit loop-back in the zero insertion force connector provides the trigger signal to the financial transaction controller, and wherein the data includes a banking key.

42. The display device of claim 33, wherein the input device is a keypad.

43. The display device of claim 33, wherein the financial transaction controller is an application specific integrated circuit (ASIC).

44. The display device of claim 33, wherein the financial transaction controller is a hybrid circuit.

45. The display device of claim 33, wherein the financial transaction controller is configured to selectively control a plurality of different displays that may be used in different types of personal devices.

46. The display device of claim 33, wherein the personal device includes a communication circuit for transmitting data relating to the financial transactions to a financial transaction network and for receiving data from the financial transaction network.

47. The display device of claim 33, wherein the personal device includes an input for activation by an operator to place the display device in a secure condition for performing a financial transaction.

48. A financial transaction device for performing financial transactions as well as personal functions other than financial transactions, the device comprising:

an input device for the entry of data into the financial transaction device;

a display for displaying information to a user;

a financial transaction controller coupled to the display and the input device; and

a personal device including controlling electronics coupled to the financial transaction controller,

wherein the personal device is configured to control the financial transaction device to perform personal functions other than financial transactions, and

wherein the financial transaction controller selectively allows the display and the input device to operate under the control of the controlling electronics to enable personal functions other than financial transactions, where the financial transaction controller assumes control of the display and the input device to prevent the controlling electronics from accessing the display and the input device to prevent tampering with or tapping off of data entered into the input device or stored in the financial transaction controller during a financial transaction.

49. The device of claim 47, wherein the financial transaction controller includes a processor, a display driver coupled to the processor and a secure memory coupled to the processor, and wherein the secure memory stores secure data and the processor is coupled to the display by the display driver.

50. The device of claim 48, wherein the financial transaction controller is physically attached to the display.

51. The device of claim 48, wherein the financial transaction controller is integrated with the display.

52. The device of claim 48, wherein the financial transaction controller is integrated with the display by connecting the financial transaction controller to a printed circuit board (PCB) that includes a display driver for controlling the display.

53. The device of claim 48, wherein the display is a liquid crystal display (LCD) having a glass face and the financial transaction controller is directly mounted onto the glass face of the LCD by a chip on glass process.

54. The device of claim 48, wherein the controlling electronics include a communication circuit for transmitting and receiving information.

55. A mobile telephone for performing financial transactions as well as mobile telephone calls other than financial transactions, the mobile telephone comprising:

an input device for the entry of data into the mobile telephone;

a display for displaying information to a user;

controlling electronics for enabling a mobile telephone call to be performed with the mobile telephone;

a financial transaction controller coupled to the display,

wherein the financial transaction controller selectively allows the input device and the display to be coupled to the controlling electronics to enable mobile telephone calls other than financial transactions, and

wherein the financial transaction controller disconnects the controlling electronics from the display and the input device and assumes control of the display and the input device to perform a financial transaction.

56. The telephone of claim 55, wherein the financial transaction controller is an electronic funds transfer point of sale (EFTPOS) controller that includes a processor, a display driver coupled to the processor and a secure memory coupled to the processor, and wherein the secure memory stores secure data and the processor is coupled to the display by the display driver.

57. The telephone of claim 56, wherein the processor is also coupled to the input device and the controlling electronics of the personal device.

58. The telephone of claim 55, wherein the financial transaction controller is physically attached to the display.

59. The telephone of claim 55, wherein the financial transaction controller is integrated with the display.

60. The telephone of claim 55, wherein the financial transaction controller is integrated with the display by connecting the financial transaction controller to a printed circuit board (PCB) that includes a display driver for controlling the display.

61. The telephone of claim 55, wherein the display is a liquid crystal display (LCD) having a glass face and the financial transaction controller is directly mounted onto the glass face of the LCD by a chip on glass process.

62. The telephone of claim 55, wherein the financial transaction controller enables communication between the controlling electronics, the display and the input device during the performance of personal functions other than financial transactions.

63. The telephone of claim 55, wherein the controlling electronics cannot access the display or the input device during a financial transaction, and wherein the financial transaction controller communicates with the controlling electronics to facilitate data transmission and reception for a financial transaction in a mobile telephone call to a financial system network.

64. The telephone of claim 55, wherein the input device is a keypad.

IX. Evidence Appendix (37 C.F.R. § 41.37(c)(1)(ix))

To the best of the knowledge of Appellant, Appellant's legal representative, and Appellant's assignee, there has been no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, nor has any other evidence been entered in the record by the Examiner and relied upon in this Appeal Brief.

X. Related Proceedings Appendix (37 C.F.R. § 41.37(c)(1)(x))

To the best of the knowledge of Appellant, Appellant's legal representative, and Appellant's assignee, there are no decisions rendered by a court or the board because, as identified above, to the best of the knowledge of Appellant, Appellant's legal representative, and Appellant's assignee, there are no other appeals, interferences, or judicial proceedings which may related to, directly affect, or be directly affected by or have a bearing on a decision by the Board in the pending appeal.